



Comptroller General
of the United States

Washington, D.C. 20548

Cunningham
145789

Decision

Matter of: Don Kelland Materials, Inc.

File: B-245801

Date: February 3, 1992

Don Kelland for the protester,
Sherry Kinland Kaswell, Esq., Department of the Interior,
for the agency.
James M. Cunningham, Esq., and Paul Lieberman, Esq., Office
of the General Counsel, GAO, participated in the preparation
of the decision.

DIGEST

Where bidder failed, after being given a second opportunity,
to furnish proof that evidence of title to real property,
pledged by individual surety in Standard Form 28 to support
bid bond, was prepared by an approved title insurance
company, agency reasonably found surety unacceptable and bid
was properly rejected.

DECISION

Don Kelland Materials, Inc. (DKMI) protests the rejection of
its bid under invitation for bids (IFB) No. I-SI-30-08760,
issued by the Bureau of Reclamation, Department of the
Interior, for the construction of turn lanes and other site
improvements near the Yuma, Arizona, Desalting Plant. The
Bureau's contracting officer rejected DKMI's low bid based
on a determination that DKMI's proposed individual surety
was unacceptable.

We deny the protest.

The IFB requested prices for 36 separate line items of
construction work and provided that award would be made to
one bidder for all the work. The IFB also required each
bidder to provide a bid guarantee in an amount equal to
20 percent of its bid price.

When bids were opened on August 28, 1991, DKMI's bid of
\$634,558 was low for all items of work. DKMI submitted a
properly executed bid bond, listing one individual surety,

Donald W. Kelland, in the amount of \$127,199. Mr. Kelland also submitted a completed Affidavit of Individual Surety (Standard Form (SF) 28) which stated (in block 7 of the SF 28 where the surety was to list assets pledged to the government in support of the bond): "See attached supporting documents." One of the attached documents was a "Lien on Real Estate," executed by Mr. Kelland "as an individual surety" under IFB-08760. This lien gave the United States the power of sale (upon default under the bid bond) of the real property pledged.¹ Also included in the attachments was a "Special Report" from First American Title Insurance Agency of Yuma, Arizona (First American), an Arizona corporation, in which Kelland Investments, a general partnership, was stated to have "title to the fee estate" in the property; a document, executed by all partners of Kelland Investment, authorizing Mr. Kelland to place any necessary liens on partnership property for "government bidding"; and an appraisal of the property.

In reviewing all the documents attached to Mr. Kelland's SF 28, the contracting officer questioned, among other things, whether the title report of First American complied with the requirements of Federal Acquisition Regulation (FAR) § 28.203-3(a)(1) (Acceptance of real property) which requires that evidence of title of real estate pledged under a bond be in the form of a certificate of title "prepared by a title insurance company approved by the United States Department of Justice." Specifically, the contracting officer noted that First American's title report did not show that the title company is approved by the Department of Justice. Consequently, the contracting officer ultimately decided to reject Mr. Kelland as an individual surety and to reject DKMI's bid.

Upon receiving notice of the rejection of its bid, DKMI filed a protest with our Office, whereupon Mr. Kelland was given an additional opportunity by the agency to furnish additional information to the contracting officer concerning his SF 28; however, after reviewing the new information, the contracting officer again determined that Mr. Kelland should be rejected as an individual surety.

The SF 28 and related supporting documents (for example, a certificate of title and pledge of assets) serve solely as an aid in determining the responsibility of an individual surety. Gene Quigley, Jr., 70 Comp. Gen. 273 (1991), 91-1 CPD ¶ 182. Consequently, the contracting officer

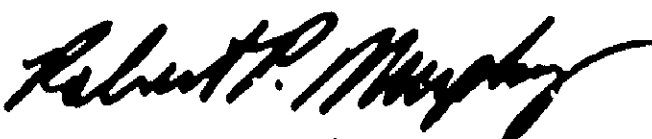
¹FAR § 28.203-2(a) (Acceptability of assets) provides that the government "will accept only cash, readily marketable assets, or irrevocable letters of credit" from individual sureties to satisfy the underlying bond obligation.

should ordinarily obtain additional information concerning any SF 28 document issue which is reasonably capable of being resolved before proceeding to award to another concern. Id.

Here, the contracting officer properly offered DKMI an additional opportunity to resolve the document issues, including the question of the acceptability of title insurance company. However, the only additional information which DKMI submitted to the contracting officer in this regard was an allegation that First American Title Insurance Agency of Yuma, Arizona is a subsidiary of First American Title Insurance Company of Santa Ana, California, an approved title insurance company. The contracting officer consulted the cognizant official within the division of the Justice Department responsible for determining which title companies are placed on the approved list, and the official stated that, even if First American of Yuma were a subsidiary of an approved company, the "Special Report" still could not be considered to be "issued by a company on the approved list." Consequently, the contracting officer again determined that DKMI's bid should be rejected.

The contracting officer complied with the requirement to pursue additional information in an attempt to resolve the issue of whether the "Special Report" was issued by an approved title company. Having offered Kelland an opportunity to provide the necessary additional information, the contracting officer reasonably concluded that the report was not issued by an approved title company since the only title company of record is not approved as required. Since even after receiving a second opportunity from the agency, the individual surety failed to provide the required security interest in acceptable assets, we find that the contracting officer properly determined the individual surety unacceptable and therefore correctly rejected DKMI's bid. See FAR 28.203-1(a).

The protest is denied.


for James F. Hinchman
General Counsel